

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6927 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

MAHENDRA @ KALU TOTADIYO

LAXMANBHAI AGRAWAL

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR CC BHALJA ASSISTANT GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/02/99

ORAL JUDGEMENT

This writ petition under Article 226 of the Constitution of India has been filed for quashing the detention order dated 1.7.1998 passed by the Police Commissioner, Ahmedabad City under section 3(2) of the Prevention of Antisocial Activities Act (for short PASA) and for immediate release of the petitioner from illegal

detention.

It appears from the grounds of detention that the Detaining Authority was satisfied from registration of five cases against the petitioner under Bombay Prohibition Act and the statements of two confidential witnesses that the petitioner was a bootlegger and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order was passed.

The impugned order has been challenged in this writ petition on the sole ground that the activities of the petitioner cannot be described as prejudicial for maintenance of public order.

So far as the activities of the petitioner are concerned, in view of five registered offences under the Bombay Prohibition Act, his activities were certainly in the nature of bootlegging activities and he can be said to be bootlegger. However, every bootlegger cannot be preventively detained unless his activities are found to be prejudicial for maintenance of public order.

The five registered cases do not give any indication that on those occasions the petitioner created any situation prejudicial for maintenance of public order.

Then remains the statements of two confidential witnesses. They have given statements in parrot like narration little making improvement from identical narration in almost majority of cases coming to this Court for examination; that on one occasion the petitioner without any sufficient reason suspected that the witness was police informer and on the other occasion the witness was asked to keep a stock of liquor and upon his refusal the petitioner got excited and the persons collected at the spot were also chased by the angry petitioner. These incidents cannot be said to be prejudicial for maintenance of public order. The Detaining Authority is well advised not to pass such orders and burdening the files in the High Court and wasting time and energy of a judge in such frivolous litigation. Time of the High Court can suitably be utilised for other effective litigations, rather, time and again, examining parrot like statements narrated by the witnesses.

Since the activities of the petitioner by no stretch of imagination can be said to be prejudicial for maintenance of public order, it cannot be sustained. The

writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 1.7.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Copy of this judgment be sent to the Police Commissioner, Ahmedabad who is in the habit of passing detention order on such insufficient and unreliable material.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt